

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)
)
 Amendment of Section 73.202(b))
 Table of Allotments)
 FM Broadcast Stations)
 (Magnolia, Arkansas and Oil City,)
 Louisiana)

MB Docket No. 02-199
 RM - 10514

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To Assistant Chief, Audio Division
 Media Bureau

REPLY COMMENTS

Columbia Broadcasting Company, Inc. ("Columbia"), licensee of Station KVMA-FM, Magnolia, Arkansas, by its counsel, hereby submits its Reply Comments to the comments of Access.1 Communications-Shreveport, LLC ("Access.1") in the above-captioned proceeding. *See Notice of Proposed Rule Making*, 17 FCC Rcd 14467 (2002). In response to the petition, the *NPRM* proposes to substitute Channel 300C2 for Channel 300C1, reallocate the channel from Magnolia to Oil City, Louisiana as that community's first local aural transmission service, and modify the license of Station KVMA-FM to reflect the change of community.

1. Attached as Exhibit 1 is a letter from the Mayor of Magnolia, Arkansas, supporting Columbia's petition. As the letter evidences, the community of Magnolia will continue to enjoy radio service from many sources, and the public interest will be furthered by granting the petition.

2. Access.1 asserts that: (1) Magnolia will be left with a daytime-only service and no fulltime aural service; (2) the relocation will leave 2,030 persons with four aural services and 9 persons with three aural services; (3) the Oil City allotment will cover 0.3 percent of the Shreveport Urbanized Area; and (4) the facts "suggest" that the relocation will enable KVMA-

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FM to serve Shreveport, Louisiana. However, even if true, none of these allegations detracts from the merits of the proposal. An analysis of applicable case law demonstrates that the grant of the petition is a simple matter of applying the Commission's allotment priorities.

3 In that regard, the grant of Columbia's petition will provide a first local transmission service to Oil City, Louisiana, invoking priority (3) of the Commission's allotment priorities. *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).¹ By contrast, none of the considerations raised by Access.I rises higher than priority (4). Each of Access.I's concerns is discussed below.

A. The relocation of KVMA-FM will continue to provide Magnolia with local aural transmission service.

4 Access.I states that after the relocation of KVMA-FM from Magnolia to Oil City, Magnolia will be left with daytime-only KVMA(AM). However, in 1990, the Commission clearly stated that a daytime-only service constitutes a local aural transmission service for the purposes of applying the FM allotment priorities. *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990). Since that time, the Commission has granted numerous changes in community of license in which a community was left with a daytime-only service. *See, e.g., Grants, Milan and Shiprock, New Mexico*, 16 FCC Rcd 20323 (2001); *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3181 (1995); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). Thus, based on applicable precedent, the retention of daytime AM service at Magnolia is considered adequate to permit the relocation of KVMA-FM to provide a first local service at Oil City, Louisiana.

¹ The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters, with co-equal weight given to priorities (2) and (3).

B. The KVMA-FM loss area will remain well-served.

5. In its petition, Columbia stated that the net gain in 60 dBu population from the relocation would be 198,763 persons, and the entire loss area would continue to be served by 5 or more services. As stated in its comments in this proceeding, Columbia obtained its figures by analyzing the loss area of KVMA-FM using the station's actual facilities. This method is reasonable given that KVMA-FM operates with facilities that are near the minimum for a Class CE facility. Access.1 argues that if hypothetical maximum facilities are used instead, the relocation of KVMA-FM will leave 2,030 persons with four aural services and 9 persons with three aural services.² These populations cannot be said to be "losing" service from KVMA-FM since they are not currently within KVMA-FM's service area, but even if these purely theoretical losses are considered, they do not detract from the overall gains of the petition.

6. In cases involving a change of community of license (such as this one), the Commission is concerned only with loss of *existing* service. In *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990), the Commission explained that the public has an expectation that an *existing* service will continue, *even with respect to reception services*. "From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set." *Id.* at ¶ 19. Accordingly, in assessing the loss area from a relocation, the Commission's policy is to consider loss of existing service, not loss of potential service. For this reason, Columbia correctly considered the actual facilities of KVMA-FM, not its theoretical

² Access.1 refers to areas with fewer than 5 aural services as "gray" areas, but they are not. A "gray" area is an area with only one aural service. See *Policies to Encourage Interference Reduction between AM Broadcast Stations*, 4 FCC Rcd 2430, 2438 n.33 (1989). It is obvious that grant of this petition would not create "gray" area.

maximum facilities.³ Using this method, as demonstrated in the petition, the entire loss area will continue to receive five aural services.

7. However, even if Access.1 is correct in using theoretical maximum facilities, the KVMA-FM loss area would actually be *better* served than that of comparable relocations recently granted by the Commission. In *Scappoose and Tillamook, Oregon*, 15 FCC Rcd 10899 (2000), the Commission granted a reallocation from Tillamook to Scappoose even though it left 4,312 persons with four aural services, 2,461 persons with three aural services, and 19 persons with two aural services. In *Detroit Lakes and Barnesville, Minnesota*, 16 FCC Rcd 22581 (2001), the Commission granted a reallocation from Detroit Lakes to Barnesville even though it left 1,458 persons with four aural services, 449 persons with three aural services, and 54 persons with two aural services. Other reallocation cases have left substantial populations with only four aural services. See, e.g., *Earle, Arkansas, et al.*, 10 FCC Rcd 8270 (1995) (7,026 persons with 4 aural services). While leaving people with fewer than five aural services may not be desirable, it is merely a factor to be considered along with other considerations under priority (4). In this case, the overall gains of the petition, including advancing priority (3) and providing new service to well over 100,000 persons, militate in favor of its grant.

C. The relocation of KVMA-FM does not implicate the Commission's policy against the migration of stations from rural to urban communities.

8. The Commission's policy against the migration of stations from rural to urban communities is implicated only when the relocated signal would cover 50 percent or more of an

³ In *Harrisburg and Albemarle, North Carolina*, 11 FCC Rcd 2511 (1996), the staff affirmed the use of theoretical maximum facilities in computing the size of a loss area. However, in that case, the petitioner had an application pending to increase power to the maximum for station's class. In any event, the case appears to contradict the Commission's stated policies, discussed above.

urbanized area. *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).⁴ In the petition, Columbia stated that no portion of the relocated KVMA-FM 70 dBu contour would overlap an urbanized area. Access.1 states that the 70 dBu contour would cover 0.3 percent of the Shreveport Urbanized Area. These statements amount to the same thing, since three-tenths of a percent is a negligible amount of overlap in connection with the 50 percent rule. This relocation simply does not raise any rural-urban concerns. *See Scappoose and Tillamook, Oregon, supra* (relocated station covered 10 percent of Portland Urbanized Area, raising no concerns); *Mill Hill, Jersey Shore and Pleasant Gap, Pennsylvania*, 15 FCC Rcd 25568 (2000) (relocated station covered 23 percent of State College Urbanized Area, raising no concerns).

Access.1 speculates that the eventual licensed KVMA-FM facility will cover some greater portion of the Shreveport Urbanized Area. This, too, is irrelevant. The Commission faced a virtually identical situation in *Warrenton, North Carolina et. al.*, 13 FCC Rcd 13889 (1998). There, the Commission made an allotment to Powhatan, Virginia based on its coverage of only 1 percent of the Urbanized Area from the allotment reference coordinates, disregarding evidence that the eventual licensed facility would cover 70 percent of the Richmond Urbanized Area. *See also Oraibi and Leupp, Arizona*, 14 FCC Rcd 13547 (1998) (disregarding speculation that eventual location would be closer to Flagstaff Urbanized Area). Similarly, in this case the Commission cannot take action based on Access.1's speculations.

WHEREFORE, for the foregoing reasons and as set forth in its petition, Columbia urges the Commission to grant the petition and allot Channel 300C2 to Oil City, Louisiana. Columbia hereby restates that should the Commission approve the requested amendments to the FM Table

⁴ In addition, the policy is implicated when the community is actually within the urbanized area. *Elizabeth City, North Carolina and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994). In this case, according to the 1990 Census maps, the Shreveport Urbanized Area does not extend outside the boundaries of Shreveport.

of Alotments. Columbia will file an application to modify the license of KVMA-FM in compliance with the Commission's spacing rules and construct the authorized facility.

Respectfully submitted,

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October 8, 2002

Its Counsel



CITY OF MAGNOLIA

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September 24, 2002

Marlene Dortch
Secretary of the Federal Communications Commission
Washington, D. C. 20554

Dear Ms. Dortch,

Reference: Magnolia, AR-Oil City, LA MB Docket 02-199

I am writing in support of Columbia Broadcasting's request to move frequency 107.9 from Magnolia, AR to Oil City, Louisiana.

Mr. Sibley and his staff have always been very helpful in this community. They will continue to have KVMA-AM serving this community and have made arrangements to LMA 99.1 FM to continue the same service to this community that we currently have.

We are also served by 100.5 FM, KZHE, with studios here in Magnolia even though they are licensed to Stamps, Arkansas.

This in no way will affect local coverage in any way.

Sincerely,


Mark E. Sibley

David Jean

Mayor

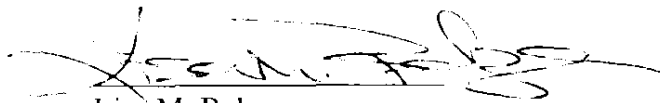
SE/202

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 8th day of October, 2002, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Comments" to the following:

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Federal Communications Commission
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* Hand Delivered